

**State of California
Regional Water Quality Control Board
Santa Ana Region
Staff Report**

April 21, 2006

ITEM: 16

Subject: Order No. R8-2006-0018, Affirming Administrative Civil Liability Complaint No. R8-2005-0099, Suncal Companies, Beaumont, Riverside County

BACKGROUND

On November 23, 2005, the Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2005-0099 (copy attached) to Suncal Companies (Suncal), for alleged violations of the State's General Permit for Storm Water Runoff Associated with Construction Activity (General Permit). In the ACL, the Executive Officer proposed an assessment of \$270,990 for the alleged violations.

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to affirm, reject, or modify the proposed administrative civil liability assessment against Suncal.

ACL No. R8-2005-0099 was issued by the Executive Officer to Suncal for violations of the General Permit. Suncal failed to implement an adequate combination of erosion and sediment control best management practices (BMPs) and discharged sediment-laden storm water to creeks tributary to San Timoteo Creek.

DISCUSSION

The General Permit regulates the discharge of storm water from construction sites as required under Section 402(p) of the Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and fee (annual fee of \$200 plus \$20/acre up to 100 acres plus 18.5% surcharge), with the State Water Resources Control Board (State Board). Suncal filed two NOIs for the site; the first one on December 5, 2003 (WDID 8 33C324950) and the second NOI on August 4, 2004 (WDID 8 33C329129). The site is located southwest of the intersection of Cherry Valley Boulevard and Interstate 10.

Suncal's approximately 800-acre site is being developed in stages. On March 3 and 4, 2004, Board staff inspected the site. Board staff found that most slopes had deep rill erosion and there were inadequate perimeter controls. Board staff also noted violations involving filling below the ordinary high water mark and filling without proper authorization.

On January 20 and 25, 2005, the Department of Fish & Game visited the site and found large areas of the site with inadequate erosion and sediment control. On January 28, 2005, Board staff inspected the site. Some BMPs were implemented, some of the BMPs were inadequate or had failed, there were deep erosion gullies, and a large amount of sediment was observed in the nearby creek that is tributary to San Timoteo Creek.

On February 11, 2005, during a rain event, Board staff inspected the site and found an inadequate combination of erosion and sediment controls. Concentrated flows were noted without adequate erosion controls and sediment-laden flows were leaving the site without adequate sediment controls.

On February 11, 2005, Board staff spoke to Mr. Gary Parker, by phone, about site conditions noted during the February 11, 2005 inspection. Board staff requested that additional BMPs be implemented to effectively control erosion and to control sediments leaving disturbed areas.

On February 18, 2005, Board staff re-inspected the site and observed no improvements in BMPs. The following week Board staff notified Mr. Gary Parker that additional BMPs were still needed.

On April 29, 2005, Board staff re-inspected the site on the day after a rain event. Board staff observed sediment-laden water from the sediment basins being discharged into the creek. Board staff also noted a dirt-bottomed channel that discharged directly into the creek. BMPs (plastic sheeting) at the end of the channel had failed, and a significant amount of sediment had been discharged into the creek.

Suncal violated Provisions A.3 and C.2 and Section A.6 of the General Permit. Pursuant to Water Code Section 13385(c) civilly liability may be administratively imposed for the preceeding violations by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day of violation. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons. The volume of the sediment-laden storm water discharge was estimated to be approximately 13 million gallons, based on runoff from 4 days of rain and the area of the site. Therefore the maximum civil liability that can be imposed is \$130.06 million gallons (\$60,000 for six days of violation, including 2 days of filling, and \$10 per gallon based on the discharge volume).

The Water Code specifies factors the Board shall consider in establishing the amount of civil liability. These factors are discussed below.

1. Nature, Circumstances, Extent and Gravity of the Violations

The discharger was fully aware of the requirements of the General Permit to develop and implement an adequate combination of erosion and sediment controls. As a result

of inadequate BMP implementation, excessive sediment was discharged to natural drainages tributary to Timoteo Creek.

2. Ability to Pay the Proposed Assessment

The discharger has not provided any information to indicate that it would have difficulty paying the proposed assessment.

3. Prior History of Violations

Prior to the inspections that led to the issuance of the ACL for the subject site, Board staff issued one Notice of Violation to Suncal in June 2002.

4. Degree of Culpability

Suncal submitted an NOI and agreed to comply with the terms and conditions of the General Permit. Suncal is therefore fully culpable for violating the General Permit, which implements the Clean Water Act. In addition, staff warned Suncal, on at least four occasions, that the BMPs were inadequate and needed improvement.

5. Economic Benefit or Savings, if any, Resulting from the Violations

By failing to effectively implement an effective combination of erosion and sediment control BMPs, Suncal gained an economic advantage of approximately \$81,000. Economic savings from these violations are estimated as follows:

Cost to implement and maintain erosion controls	\$72,000
Cost to construct and maintain sediment basins and conveyance systems	\$9,000
Total cost savings	<hr/> = \$81,000

STATEWIDE ENFORCEMENT POLICY

On February 19, 2002, the State Water Resources Control Board adopted a Revised Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are consistent, predictable, and fair. The above-described administrative civil liability complaint is in accordance with the State Enforcement Policy.

RECOMMENDATION

After consideration of the above factors, staff recommends that the Board affirm the assessment of \$270,990 specified in the Administrative Civil Liability Complaint issued by the Executive Officer on November 23, 2005.

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:)	Order No. R8-2006-0018
)	
Suncal Companies)	for
P.O. Box 627)	Administrative Civil Liability
Calimesa, CA 92320)	
)	
Attn: Mr. Gary Parker)	

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), held a hearing on April 21, 2006 to receive testimony and to take evidence on the allegations contained in Complaint No. R8-2005-0099, dated November 23, 2005, and on the recommendation for the imposition of administrative civil liability pursuant to Water Code Section 13385. The Board finds as follows:

1. On August 19, 1999, the State Water Resources Control Board (State Board) adopted Waste Discharge Requirements, Order No. 99-08-DWQ, (NPDES No. CAS000002), General Permit for Storm Water Discharges Associated with Construction Activity (General Permit). Suncal Companies (Suncal) is authorized to discharge storm water from its construction site located on the southwest side of Interstate 10, directly west of the intersection of Cherry Valley Boulevard and Interstate 10, Beaumont (site), under the Permit, WDiDs No. 8 33C324950 and 8 33C329129. The General Permit requires Suncal to develop and implement a Storm Water Pollution Prevention Plan (SWPPP) and a monitoring program/reporting plan. The SWPPP must identify best management practices (BMPs) to reduce or prevent pollutants in storm water and authorized non-storm water discharges. Suncal is required to implement controls to reduce pollutants in storm water discharges from their construction sites to the Best Available Technology (BAT)/Best Conventional Pollutant Control Technology (BCT) performance standard.
2. On March 3 & 4, 2004, January 28, February 11, February 18, and April 29, 2005, Board staff conducted inspections of the site and on January 20 & 25, 2005 Department of Fish & Game staff inspected the site. Board staff observed a lack of erosion controls, unauthorized grading activities within the waters of the US, filling activities in violation of the 401 Water Quality Certification, a large amount of sediment discharges to the adjacent creek that is tributary to San Timoteo Creek, and a lack of maintenance of the best management practices (BMPs) at the site.
3. The allegations in Complaint No. R8-2005-0099 are incorporated herein.
4. Water Code Section 13385(a)(1) provides that any person who violates Section 13375 or 13376 shall be civilly liable, and 13385(a)(2) provides that any person who violates waste discharge requirements or any water quality certification shall

be also civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day of violation. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons. Based on the violations cited above, Suncal is civilly liable for a maximum amount of \$130,060,000.

5. On November 23, 2005, after consideration of the factors specified in Section 13385(e) of the Water Code, the Executive Officer issued Administrative Civil Liability Complaint No. R8-2005-0099 to Suncal, proposing that the Board impose civil liability in the amount of \$270,990 on Suncal, for the violations cited above.
6. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to California Water Code Section 13385, administrative civil liability shall be imposed on Suncal in the amount of \$270,990 for the violations cited in Complaint No. R8-2005-0099, payable as set forth below.

1. Suncal shall pay \$270,990 to the State Board by May 22, 2006.
2. Suncal may submit a proposal prior to May 22, 2006 to the Executive Officer for participation in a supplemental environmental project in an amount of up to \$135,495. The balance of the total assessment of \$270,990 shall be paid to the State Board by May 22, 2006.
3. The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

Pursuant to Water Code Section 13320, you may petition the State Board for review of this Order. If you choose to do so, you must submit the petition to the State Board within 30 days of the Regional Board's action on this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on April 21, 2006.

Gerard J. Thibeault
Executive Officer



California Regional Water Quality Control Board
Santa Ana Region



Alan C. Lloyd, Ph.D.
Agency Secretary

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 - FAX (951) 781-6288
<http://www.waterboards.ca.gov/santaana>

Arnold Schwarzenegger
Governor

November 23, 2005

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Gary Parker
Suncal Companies
P.O. Box 627
Calimesa, CA 92320

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2005-0099, TRACT 31462,
BEAUMONT, RIVERSIDE COUNTY**

Dear Mr. Parker:

We are enclosing a certified copy of Complaint No. R8-2005-0099, proposing administrative civil liability of \$270,990 for violations of the General Permit for Storm Water Discharges Associated with Construction Activities, Order No. 99-008-DWQ, NPDES No. CAS000002, WDID No. 833C324950 & 8 33C329129.

If necessary, a public hearing on this matter will be scheduled for the Regional Board meeting on January 18, 2006. The staff report regarding this complaint and the meeting agenda will be mailed to you not less than 10 days prior to the Board meeting.

You have the option to waive your right to a hearing. Should you waive your right to a hearing and pay the proposed assessment, the Regional Board may not hold a public hearing on this matter. If you choose to waive your right to a hearing, please sign the enclosed waiver form and submit the form with a check for \$270,990. The check should be made payable to the State Water Resources Control Board. The payment and the waiver form should be mailed to this office in the enclosed preprinted envelope.

If you do not wish to waive your right to a hearing, a pre-hearing meeting with Board staff is recommended. Should you wish to schedule a pre-hearing meeting, please call us prior to December 16, 2005. At that time, you may submit information that may not have been previously available to staff regarding this incident. The information should address the following:

1. Nature, circumstances, extent, and gravity of the violations;
2. Your ability to pay the proposed assessment;
3. Any prior history of violations;

California Environmental Protection Agency



Recycled Paper

November 23, 2005

4. Your degree of culpability;
5. Economic benefit or saving; and
6. Such other matters as justice may require.

If you have any questions regarding this complaint, you may contact Ms. Milasol C. Gaslan at (951) 782-4419 or Mr. Michael J. Adackapara at (951) 782-3238. All legal questions should be referred to our legal counsel, Mr. Jorge Leon, at (916) 341-5180.

Sincerely,



Gerard J. Thibeault
Executive Officer

Enclosures: Complaint No. R8-2005-0099, Waiver Form, Invoice and Envelope

cc with a copy of the Complaint:

Regional Board
Bruce Fujimoto, State Water Resources Control Board, Division of Water Quality
Jorge Leon, State Water Resources Control Board, Office of Chief Counsel
Kathi Moore, US-EPA, Region 9 (WTR-7)
Riverside County, Storm Water Program – Jason Uhley, NPDES Coordinator
City of Beaumont – John Wilder, NPDES Coordinator

